



1995 SENATE BILL 561

February 21, 1996 - Introduced by Senators HUELSMAN, DRZEWIECKI, PANZER, ROSENZWEIG, SCHULTZ, RUDE, BUETTNER and PETAK, cosponsored by Representatives BRANCEL, PORTER, KELSO, GREEN, MUSSER, OTTE, OLSEN, FREESE, HAHN, ZUKOWSKI, GRONEMUS, GOETSCH, BALDUS, LADWIG, JENSEN, ZIEGELBAUER, KLUSMAN, VRAKAS and AINSWORTH. Referred to Committee on Judiciary.

1 **AN ACT** *to amend* 187.19 (1); and *to create* subchapter I (title) of chapter 187
2 [precedes 187.01], subchapter II (title) of chapter 187 [precedes 187.20] and
3 subchapter III of chapter 187 [precedes 187.40] of the statutes; **relating to:**
4 limiting the liability of trustees, directors, officers and volunteers of religious
5 organizations.

Analysis by the Legislative Reference Bureau

Current law contains provisions limiting the liability of directors, officers and volunteers of Roman Catholic churches incorporated under certain state law provisions. This bill creates parallel provisions limiting the liability of directors, officers and volunteers of certain other religious organizations.

Under current law, unless the director or officer knew or should have known that reliance was unwarranted, a director or officer, in discharging his or her duties to a religious organization, may generally rely on information, opinions, reports or statements prepared by any of the following: 1) an officer or employe of the Roman Catholic church whom the director or officer believes in good faith to be reliable and competent in the matters presented; 2) legal counsel, public accountants or other professional persons or experts employed by the Roman Catholic church, as to matters the director or officer believes in good faith are within the person's professional or expert competence; and 3) in the case of a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

In addition, current law provides that a director or officer is not liable to any person for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the liability arises from: 1) a wilful failure to deal fairly in connection with a matter in

1 **187.40 Definitions.** In this subchapter:

2 (1) “Director” means an individual who is serving as a trustee or director of a
3 religious organization or an individual who is serving in a similar capacity in a
4 religious organization.

5 (2) “Religious organization” means an association, conference, congregation,
6 convention, committee or other entity that is organized and operated for a religious
7 purpose and that is eligible for an exemption from federal income tax under 26 USC
8 501 (c) (3) or (d) and any subunit of such an association, conference, congregation,
9 convention, committee or entity that is organized and operated for a religious
10 purpose, except that “religious organization” does not include any of the following:

11 (a) A Roman Catholic church organized under s. 187.19.

12 (b) A nonstock corporation organized under ch. 181.

13 (3) “Officer” means an individual who is serving as a president, vice president,
14 treasurer or secretary of a religious organization or who is serving in a similar office
15 in a religious organization.

16 **187.41 Reliance by directors or officers.** Unless the director or officer
17 knew or should have known that reliance was unwarranted, a director or officer, in
18 discharging his or her duties to a religious organization, may rely on information,
19 opinions, reports or statements, any of which may be written or oral, formal or
20 informal, including financial statements and other financial data, if prepared or
21 presented by any of the following:

22 (1) An officer or employe of the religious organization whom the director or
23 officer believes in good faith to be reliable and competent in the matters presented.

1 **(2)** Legal counsel, public accountants or other professional persons or experts
2 employed by the religious organization, as to matters the director or officer believes
3 in good faith are within the person's professional or expert competence.

4 **(3)** In the case of reliance by a director, a committee of the governing body of
5 the religious organization of which the director is not a member if the director
6 believes in good faith that the committee merits confidence.

7 **187.42 Limited liability of directors and officers.** **(1)** Except as provided
8 in sub. (2), a director or officer is not liable to the religious organization, its members
9 or creditors, or any person asserting rights on behalf of the religious organization,
10 its members or creditors, or any other person, for damages, settlements, fees, fines,
11 penalties or other monetary liabilities arising from a breach of, or failure to perform,
12 any duty resulting solely from his or her status as a director or officer, unless the
13 person asserting liability proves that the breach or failure to perform constitutes any
14 of the following:

15 (a) A wilful failure to deal fairly with the religious organization or its members
16 in connection with a matter in which the director or officer has a material conflict of
17 interest.

18 (b) A violation of criminal law, unless the director or officer had reasonable
19 cause to believe his or her conduct was lawful or no reasonable cause to believe his
20 or her conduct was unlawful.

21 (c) A transaction from which the director or officer derived an improper
22 personal profit.

23 (d) Wilful misconduct.

24 **(2)** (a) Except as provided in par. (b), this section does not apply to any of the
25 following:

1 1. A civil or criminal proceeding brought by or on behalf of any governmental
2 unit, authority or agency.

3 2. A proceeding brought by any person for a violation of state or federal law
4 where the proceeding is brought pursuant to an express private right of action
5 created by state or federal statute.

6 3. If the religious organization operates a cemetery, the liability of a director
7 or officer arising from a breach of, or failure to perform, any duty relating to the
8 receipt, handling, investment or other use of perpetual care funds, maintenance
9 funds or other funds held in trust in connection with the operations of the cemetery.

10 (b) Paragraph (a) 1. and 2. does not apply to a proceeding brought by a
11 governmental unit, authority or agency in its capacity as a private party or
12 contractor.

13 **187.43 Limited liability of volunteers.** (1) In this section, “volunteer”
14 means an individual, other than an employe of the religious organization, who
15 provides services to or on behalf of the religious organization without compensation.

16 (2) Except as provided in sub. (3), a volunteer is not liable to any person for
17 damages, settlements, fees, fines, penalties or other monetary liabilities arising from
18 any act or omission as a volunteer, unless the person asserting liability proves that
19 the act or omission constitutes any of the following:

20 (a) A violation of the criminal law, unless the volunteer had reasonable cause
21 to believe his or her conduct was lawful or no reasonable cause to believe his or her
22 conduct was unlawful.

23 (b) Wilful misconduct.

24 (c) If the volunteer is a director or officer of the religious organization, an act
25 or omission within the scope of the volunteer’s duties as a director or officer.

1 (d) An act or omission for which the volunteer received compensation or any
2 thing of substantial value in lieu of compensation.

3 **(3)** (a) Except as provided in par. (b), this section does not apply to any of the
4 following:

5 1. A civil or criminal proceeding brought by or on behalf of any governmental
6 unit, authority or agency.

7 2. A proceeding brought by any person for a violation of state or federal law
8 where the proceeding is brought pursuant to an express private right of action
9 created by state or federal statute.

10 3. Claims arising from the negligent operation of an automobile, truck, train,
11 airplane or other vehicle by a volunteer.

12 4. A proceeding against a volunteer who is licensed, certified, permitted or
13 registered under state law and which is based upon an act or omission within the
14 scope of practice under the volunteer's license, certificate, permit or registration.

15 5. Proceedings based upon a cause of action for which the volunteer is immune
16 from liability under s. 146.31 (2) and (3), 146.37, 895.44, 895.48, 895.482, 895.51 or
17 895.52.

18 (b) Paragraph (a) 1. and 2. does not apply to a proceeding brought by or on
19 behalf of a governmental unit, authority or agency in its capacity as a contractor.

20 **187.44 Applicability of other liability provisions.** This subchapter does
21 not affect any powers and privileges granted under s. 187.01 (2) to religious societies
22 formed under s. 187.01.

23 (END)